

§ 228.17

§ 228.17 Special procurement rules for construction and engineering services.

Advanced developing countries, as defined in § 228.01, which USAID has determined to have attained a competitive capability in international markets for construction services or engineering services are not eligible to furnish USAID-financed construction and engineering services unless approved to do so under a waiver to Code 935 under subpart D of this part.

§ 228.18 Long-term leases.

Any commodity obtained under a long-term lease agreement as defined in § 228.01, including motor vehicles, is subject to the source and nationality requirements of this subpart B of this part, including the special procurement rules as set forth in § 228.19.

§ 228.19 Special source rules requiring United States manufacture or procurement.

(a) Certain agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354). USAID maintains a list of restricted agricultural commodities and related policies, which is available in USAID's Automated Directives System, ADS 312.

(b) Motor vehicles must be manufactured in the United States to be eligible for USAID financing (22 U.S.C. 2396). Any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. However, financing of transportation or driver services from an individual or commercial entity and not directly financing the purchase or lease of a vehicle, is subject to the requirements at § 228.12. Financing transportation or driver services means:

(1) The vehicle is independently owned or leased by the hired driver or company;

(2) The vehicle will be maintained by the individual or commercial entity

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and driven only by the hired driver(s); and

(3) The vehicle is not directly leased, either as a separate line item in the contract separate from the cost of the driver's services, or under a separate contract.

(c) Under section 606(c) of the FAA, USAID cannot finance any pharmaceutical product that is manufactured outside of the United States if the pharmaceutical is covered by a valid U.S. patent, unless the U.S. patent holder expressly authorizes the manufacture of the pharmaceutical. Without such express authorization, the pharmaceutical must be purchased from the U.S. patent holder. In addition, USAID shall not finance non-contraceptive pharmaceuticals without prior written approval as provided in USAID's Automated Directives System Chapter 312. Contraceptives may be financed in accordance with the procedures in ADS 312.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

§ 228.20 Purpose.

Sections 228.21 through 228.24 of this part set forth the rules governing the eligibility of commodity-related services, both delivery services and incidental services, for USAID financing. These rules, except for §§ 228.21 and 228.22, may be waived in accordance with the provisions in subpart D of this part. The rules on delivery services apply whether or not USAID is also financing the commodities being transported. In order to be identified and eligible as incidental services, such services must be connected with a USAID-financed commodity procurement.

§ 228.21 Ocean transportation.

When transporting commodities subject to the provisions of the Cargo Preference Act, 46 U.S.C. 55305, USAID will administer its programs in accordance with that act and its implementing regulations in 46 CFR part 381 (and any waivers applicable thereto). Subpart D of 22 CFR part 228 does not apply to this provision.